IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 101 of 2006
With
CRIMINAL REVISION APPLICATION No. 953 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
ISHWARJI SHAKARJI MAKWANA

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Appearance in Criminal Appeal:
MR IM PANDYA APP for Appellant
MR JV JAPEE for Respondent

Appearance in Criminal Revision

MR HEMAL A DAVE for Applicant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/10/2007

ORAL COMMON JUDGMENT :

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. J.V. Japee waives for respondent in Criminal Appeal No. 101 of 2006.

2 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, 5th Fast Track Court, District – Sabarkantha at Himmatnagar, in Sessions Case No.15 of 2005, whereby present respondent, being accused of the Sessions Case, came to be acquitted by the Trial Court for the charges levelled against him under Sections 498-A and 302 of the Indian Penal Code as well as for the charges under Sections 3 and 7 of the Prevention of Dowry Act.

3 Learned APP Mr. I.M. Pandya for the State and learned Advocate Mr. J.V. Japee for respondent in Appeal requested this Court to hear the Appeal finally as the record and proceedings of the Trial Court is available with the Court and that they would assist the Court by extra copies of the evidence recorded during the trial and the documents produced before the Trial Court. Request is granted and Criminal Appeal is heard finally.

4 According to prosecution case, the trial was conducted against the respondent for the death of his wife Sejal and daughter of complainant Patel Bhailalbhai Poonamchand. As per the prosecution case, deceased Sejal was in love with respondent and they married in 1996 at village Nani Bhagole against the wish and will of Sejal's parents. After the marriage, she started residing with respondent at Prantij. According to prosecution case, after 6 to 8 months of the said marriage, Sejal had contacted her parents and expressed that the respondent was forcing her to ask for half share in the property of the parents and to bring cash amount from her parents. It is the prosecution case that complainant father reacted that since Sejal had married to respondent without their wish and will, she was not to get any share in the property and thereafter according to prosecution case, at the interval of 2/3 months, Sejal continued to contact her parents expressing that refusal to give share in property, on the part of her parents, had resulted in cruelty physically as well as mentally upon Sejal at the end of respondent. The incident took place on 8th of September, 2004. On that day, complainant Bhailalbhai Poonamchand Patel was at village Torna, Taluka – Kapadvanj, District – Kheda and when he reached at Ahmedabad in the evening he received a message from her son Pragneshkumar that Sejal was burnt at the house of the respondent and she was shifted to Ahmedabad Civil Hospital for treatment. Therefore,

complainant visited Civil Hospital at Ahmedabad and found that his daughter Sejal was being treated there as an indoor patient. Mother of the deceased Laxmiben Bhailalbhai was also with the complainant. Complainant found that Sejal was completely unconscious and at about 7.00 p.m. she died. Respondent was present and some relatives of the complainant were also present. It is the allegation in the complaint of the complainant that since they refused to give share in their property and to give any cash amount, respondent poured kerosene upon Sejal and put her ablaze. This complaint, being registered before Shahibaug Police Station, was sent to Prantij Police Station and a crime came to be registered against the respondent for the above said offences. After the investigation, a charge sheet was submitted in the Court of Judicial Magistrate, First class and Judicial Magistrate, First Class, Prantij, committed this criminal case to the Court of Sessions, which was registered as Sessions Case No. 15 of 2005. This Sessions Case was made over to the learned Additional Sessions Judge and 5th Fast Track Court at Himatnagar, who framed charges against the respondent vide Exhibit-5, on 6th of April, 2005. Respondent pleaded not guilty and, therefore, he was put to trial. Prosecution examined as many as 17 witnesses and produced on record voluminous documentary evidence. After the evidence of prosecution was over, incriminating circumstances against the accused were brought to his notice and his statement was

recorded by the Trial Court under Section 313 of the Code of Criminal Procedure. The case of the respondent was of total denial. The learned Trial Judge thereafter heard prosecution as well as defence and came to the above conclusion and, hence, this Appeal.

6 Learned APP Mr. I.M. Pandya for the State and learned Advocate Mr. J.V. Japee for the respondent in Criminal Appeal were heard in detail. While in Criminal Revision Application, learned Advocate Mr. Hemal A Dave for the applicant was heard in detail. The said Criminal Revision Application is preferred by the original complainant against the same judgment and order.

7 We have undertaken threadbare scrutiny of the evidence recorded during the trial and we have also re-appreciated the evidence with reference to vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have scanned the reasons assigned by the Trial Court for the acquittal with reference to the appreciation of the evidence. We have taken into consideration the contentions raised by the learned Advocate in the Criminal Revision Application and the contentions raised by learned counsels in the Appeal.

8 Though the prosecution examined 17 witnesses, but

effective witnesses are PW-4, PW-5 and PW-6 to bring home the guilt of the respondent. To bring the case within the allegations as levelled against the respondent under Sections 498-A and 306 of the Indian Penal Code and under Sections 3 and 7 of the Prevention of Dowry Act, PW-4 Bhailalbhai Poonamchand stated in his deposition at Exhibit – 17 that though Sejal had married to respondent for more than 7 years from the date of the incident, but during that period, he was receiving phone calls from deceased Sejal and Sejal was expressing grievances against the respondent to the extent that respondent was forcing her to obtain share in the property of PW-4 Bhailalbhai Poonanchand and on refusal by the parents, cruelty was executed upon the deceased mentally as well as physically. On 10th of June, 2003, PW-4 executed a Will and his property was bequeathed to his son and thereafter on 8th of September, 2004, the incident occurred as he has mentioned in the complaint, which is produced at Exhibit–18. PW-5 Pragneshkumar Bhailalbhai, examined at Exhibit – 19, also stated that though they had no relations with Sejal, but she used to contact them by phone, which were received by his father i.e. PW-4 and she was expressing grievances before her father that the respondent was beating her and treating her with cruelty physically as well as mentally and on the day of the incident they received phone call and went to Ahmedabad. Same is the say of PW-6 Laxmiben Bhailalbhai. This is the effective evidence

against the respondent which prosecution attempted to tender to connect the respondent with the charges levelled against him. While appreciating the evidence of these three witnesses, in cross-examination of PW-4, it clearly transpires that there was no contact at all with Sejal by her parents. It is also admitted that the marriage of deceased took place in 1996 and thereafter till the incident occurred, neither Sejal visited her parents house nor her parents took any care to visit the house of Sejal. It also transpires that this was because Sejal had married to the respondent against the wish of her parents. According to PW-4, intimation of their marriage was received by him in post. He also admitted that the Will was executed by him and no statement in the Will was made that how Sejal was kept away from bequeath. Even Sejal had two children out of this wedlock and according to this witness, they came to know about the children of Sejal only from other people. PW-4 admitted in his cross-examination that they had no relation or connection, whatsoever, with Sejal or the respondent or her children after marriage of Sejal. PW-4 admitted in his cross-examination to the extent that no personal meeting had ever taken place between them and Sejal during this seven years of marriage life of Sejal. Likewise, PW-5 Pragneshkumar, Exhibit – 19 also stated that after marriage of Sejal, they had no relationship or any type of contact with her. Nobody visited from their side to the house of Sejal nor any relative of Sejal's in-laws

had ever visited their house. Even they did not know that Sejal had two kids, which they came to know only from other people. Same is the say of Laxmiben in her cross-examination. She admitted that since they refused to permit her to marry with respondent, Sejal refused to visit their house. They did not make any attempt to bring Sejal to their house and establish relationship. They had no social relationship with Sejal or her in-laws.

9 All other witnesses examined by the prosecution are panch witnesses, Doctor who treated Sejal and the Doctor who conducted the postmortem of dead body of Sejal. Police witnesses, who investigated the crime, are also examined, but they are not material so far as the guilt of the respondent is concerned.

10 While appreciating the evidence of the prosecution, there is no doubt that Sejal died on account of 80% burn injuries which she received on her body, but at the same time, the ingredients of Section 498-A are required to be proved by the prosecution against the respondent beyond reasonable doubt so as to connect the accused with the charges. While we appreciated the evidence of these three witnesses, it clearly appears that filing of the complaint by complainant is an after thought as it is on record in nature of admission of these three

witnesses that when no relationship personal or social were existing between Sejal and her parents, even to the extent that, her parents did not know about the children of Sejal, how could it be believed that Sejal might have contacted her parents on phone, and that too, at the interval of three months and might have expressed grievances about the cruelty. The witnesses stating this fact to connect the accused with the crime are not credible on the account that neither they attempted to renew relationship with Sejal and her husband nor Sejal at any time visited her parents even for social call for about seven and more years right from the date of marriage till the date of death of Sejal. There was communication black out between the parties, and in these circumstances, when say of these three witnesses are considered that they were receiving phone calls from Sejal about the cruelty of respondent, in our humble view, reliability of these witnesses is tarnished and respondent cannot be saddled with criminal liability on the say of these three witnesses. In the circumstances mentioned above, necessary it is to be noted that PW-12 Chhaganbhai Jivabhai, examined at Exhibit – 34, Police Inspector, who investigated the above said crime. According to him, though he had recorded the statements of neighbours of Sejal, but during his investigation, from them it comes that there was no quarrel between husband and wife on account of share in property of father of Sejalben. Going through his deposition, though the

statements recorded by him under Section 161 of the Code of Criminal Procedure, cannot be taken cognizance of, but general tenure of investigation which this witness deposed, leads to the inference that, except these three witnesses, there were no witnesses, during investigation, who stated anything incriminating against the respondent.

11 Learned Trial Judge, therefore, took into consideration the above circumstances and came to the conclusion that when there was communication black out for about seven years between Sejal and her parents, it was impossible that, Sejal might have contacted parents on phone and expressed that respondent was executing cruelty upon her. It is impossible further to believe that in such circumstances, parents would not have taken any steps to redress the grievances of the daughter, had they kept any relationship alive, even to the extent of conveying through phone and, hence, whatever these three witnesses stated, was not credible. This is not the case wherein any material witness has been dropped by the prosecution knowing the prosecution story and was examined during the investigation. The fact is otherwise that except these three witnesses, Investigating Officer gives an impression that there was no other witness to connect the accused with the crime. Therefore, the

contentions raised on behalf of the Revisionist in Criminal Revision Application by learned Advocate Mr. Dave that the police did not attach primus, the investigation was faulty and that the Revision was required to be allowed, cannot be accepted. When we have considered the very issue in broader scope of Appeal, we do not find any substance in Revision Application as well.

12 In an appeal against the acquittal, when the judgment and order impugned is found proper and the reasons assigned by the Trial Judge and conclusions arrived are possible and probable, then only because legitimate second view is possible from the same evidence than taken by the Trial Court, would not permit interference in the judgment and order of acquittal, unless it is found that the conclusions arrived at are perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable. We are unable to find the conclusion arrived at by the Trial Judge perverse so as to call for any interference in the judgment and order impugned in this Appeal. We, therefore, do not see any reason to interfere with the findings arrived at by the Trial Court and the judgment and order impugned in the Appeal requires no interference at all.

13 In view of above, Criminal Appeal No. 101 of 2006 stands dismissed as well as Criminal Revision Application No. 953 of 2005 also stands dismissed.

(J. R. VORA, J.)

(M.R. SHAH, J.)

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